

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JESSICA SCULLY, et al.,

Plaintiffs,

v.

C-1-01-417

HARTFORD CASUALTY
INSURANCE CO., et al.,

Defendants.

ORDER

On April 15, 2004, the Court issued an Order granting plaintiffs thirty days to respond to arguments raised by defendants in various filings and to address the specific issue of what impact, if any, the Ohio Supreme Court's recent decision in *Westfield v. Galatis*, 100 Ohio St.3d 216, 797 N.E.2d 1256 (2003) has on plaintiffs' claims against all defendants. Plaintiffs did not file a response. The Court therefore issued an Order dated May 27, 2004, directing plaintiffs to show cause within twenty days why this action should not be dismissed in light of the Ohio Supreme Court's decision in *Westfield*. Plaintiffs have not responded to the Order to show cause.

The Court of Appeals for the Sixth Circuit has followed the decision in *Westfield*. See *Bishop v. Pacific Employers Insurance Co.*, 88 Fed. Appx. 867 (6th Cir. 2004)(not published in Fed. Reporter). Applying the law established in *Westfield* to this case, it is apparent that plaintiffs do not have a valid claim for underinsured motorists benefits against the defendant

insurance companies under Ohio law as there is no allegation that Jessica Scully was acting within the scope of her employment with the University of Cincinnati at the time of her injury. Plaintiffs have not responded to this Court's recent Orders providing them with an opportunity to show otherwise and to establish that their claims against any of the named defendants survive the Ohio Supreme Court's decision in *Westfield*. Nor have plaintiffs responded to defendants' supplemental filings in support of their motions to stay and for summary judgment which address the impact of the *Westfield* decision on plaintiffs' claims.

Accordingly, defendant United Educators Insurance Risk Group, Inc.'s motion to stay action (doc. 4) is **DENIED** as moot. This action is hereby **DISMISSED** as to all defendants. The case is **TERMINATED** on the docket of this Court at plaintiffs' cost.

IT IS SO ORDERED.

S/ Herman J. Weber

HERMAN J. WEBER
SENIOR JUDGE, UNITED STATES DISTRICT COURT

J:\HJWA\01-417disml.wpd